

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMES LYLE,

Petitioner,

NOT FOR PUBLICATION
MEMORANDUM & ORDER

-against-

03-CV-5155 (CBA)

DALE ARTUZ, Superintendent,
Clinton Correctional Facility,

Respondent.

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AMON, UNITED STATES DISTRICT JUDGE:

Petitioner James Lyle filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 claiming two violations of the Sixth Amendment to the United States Constitution; namely, that he was sentenced as a persistent felony offender in violation of principles set forth in Apprendi v. New Jersey, 530 U.S. 466 (2000), and that he received ineffective assistance of counsel. This Court referred the petition to Magistrate Judge Steven M. Gold for a report and recommendation (“R&R”).

This Court has now received the characteristically thorough and well-reasoned R&R of Magistrate Judge Gold which concluded that both claims had been exhausted in state court but that neither claim had merit. Respondent Artuz filed objections to the Magistrate Judge’s determination that Lyle’s sentencing claim was properly exhausted. Lyle objected to the rejection of his claims on the merits.

This Court has carefully reviewed the R&R and the objections and finds none of those objections persuasive. The Court rejects Lyle’s Apprendi claim for the reasons set forth in the R&R. The Court also finds persuasive the decision in Witherspoon v. Woods, No. 04-5528, 2006 WL 721510 (E.D.N.Y. Mar. 6, 2006) in which arguments almost identical to those made in this case were rejected by the court. This Court further clarifies that in adopting the R&R, and

rejecting Lyle's sentencing claim, it attaches no weight to the denial of certiorari of People v. Rivera, 5 N.Y.3d 61, 800 N.Y.S.2d 51, cert. denied _ U.S. __, 126 S.Ct. 564 (2006).

The Court hereby adopts the R&R as the opinion of the Court and dismisses Lyle's petition as being without merit. A certificate of appealability will not issue, as Lyle has not made a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). The Clerk of the Court is directed to enter judgment in accordance with this Order and to close the case.

SO ORDERED.

Dated: Brooklyn, New York
May 31, 2006

Carol Bagley Amon
United States District Judge